

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JASON D MILLER,

Plaintiff,

v.

Case No. 23-cv-0116-bhl

KILOLO KIJAKAZI,

Defendant.

**ORDER GRANTING MOTION FOR LEAVE TO PROCEED WITHOUT
PREPAYMENT OF THE FILING FEE**

On January 30, 2023, Plaintiff Jason D. Miller filed a Social Security Complaint seeking review of a final decision by the Acting Commissioner of the Social Security Administration. (ECF No. 1.) That same day, he moved for leave to proceed without prepayment of the filing fee. (ECF No. 2.) The Court has authority to allow a litigant to proceed without prepaying the filing fee if it determines that the litigant is unable to pay the costs of commencing the action and the action is not frivolous, states a claim, and is not brought against an immune defendant. *Cf.* 28 U.S.C. §1915(a)(1), (e)(2).

Miller's motion indicates that he works at Picklebelly Pub in Weyauwega, Wisconsin and earns \$650 a month. (ECF No. 2 at 2.) He also owns a 2015 Honda Fit worth approximately \$12,000. (*Id.* at 3.) And he has \$120 in his bank account. (*Id.*) His monthly expenses total \$492.50. (*Id.*) On these facts, it appears that Miller is sufficiently indigent for a fee waiver.

The Court must also review Miller's complaint for sufficiency. If the complaint fails to state a claim on which relief may be granted, it must be dismissed. *See Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1018 (7th Cir. 2013). A frivolous complaint must also be dismissed. 28 U.S.C. §1915(e)(2)(B)(i). "A frivolous complaint is one in which 'the petitioner can make no rational argument in law or facts to support his or her claim for relief.'" *Williams v. Faulkner*, 837 F.2d 304, 306 (7th Cir. 1988) (quoting *Jones v. Morris*, 777 F.2d 1277, 1279-80 (7th Cir. 1985)).

In this case, Miller timely invoked this Court's jurisdiction pursuant to 42 U.S.C. Section 405(g). (ECF No. 1 at 1.) He argues that Acting Commissioner's decision denying his claim for Social Security benefits is not supported by substantial evidence and is contrary to law and regulation. (*Id.*) This is not frivolous and states an arguable claim. As a result, the Court will grant Miller's request to waive the prepayment of the filing fee.

IT IS HEREBY ORDERED that Plaintiff Jason Miller's Motion to Proceed Without Prepayment of the Filing Fee, ECF No. 2, is **GRANTED**.

Dated at Milwaukee, Wisconsin on February 2, 2023.

s/ Brett H. Ludwig

BRETT H. LUDWIG

United States District Judge